

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ZACKERY CRABTREE,

Case No. 3:19-cv-00750-MMD-WGC

Plaintiff.

ORDER

MICHAEL VIETA KABELL

Defendants.

I. SUMMARY

Pro se Plaintiff Zackery Crabtree, currently incarcerated and in the custody of the Nevada Department of Corrections (“NDOC”) announced his intent to file suit under 42 U.S.C. § 1983, alleging a conspiracy to violate NRS § 453.3405 between the district attorney, judge, public defender, and county sheriff involved in his criminal case, and seeks to vacate his criminal sentence, in a document phrased as a notice of intent to file a civil rights complaint. (ECF No. 1-1.) Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge William G. Cobb (ECF No. 6), recommending the Court dismiss this case without prejudice. Plaintiff filed an objection to Judge Cobb’s Recommendation. (ECF No. 7.) As further explained below, the Court will overrule Plaintiff’s objection because the Court agrees with Judge Cobb’s analysis, will fully adopt the R&R, and dismiss this case without prejudice.

II. BACKGROUND

As relevant to Plaintiff's objection, Judge Cobb recommends dismissing this case for several, alternative reasons. (ECF No. 6.) Specifically, Plaintiff did not file an *in forma pauperis* ("IFP") application on the Court's designated form, as required by the local rules. (*Id.* at 1-2, 4.) Next, Plaintiff did not file a Complaint, but instead filed a document phrased

1 as a notice of intent to file a Complaint. (*Id.* at 4.) But assuming the document he filed
2 should be construed as a Complaint, Judge Cobb nonetheless recommends dismissing it
3 because his case is barred by *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)—because
4 Plaintiff specifically seeks “[h]is criminal conviction be vacated” (ECF No. 1-1 at 4)—and
5 because named Defendant Kabell, the district attorney in Plaintiff’s criminal case, is likely
6 entitled to prosecutorial immunity. (ECF No. 6 at 5.) Plaintiff objects to each reason Judge
7 Cobb provides in the R&R. (ECF No. 7.)

8 **III. LEGAL STANDARD**

9 This Court “may accept, reject, or modify, in whole or in part, the findings or
10 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
11 timely objects to a magistrate judge’s report and recommendation, then the Court is
12 required to “make a de novo determination of those portions of the [report and
13 recommendation] to which objection is made.” *Id.* Because of Plaintiff’s objection to the
14 R&R, the Court has undertaken a de novo review of it, including the other documents filed
15 in this case.

16 **IV. DISCUSSION**

17 Following a de novo review of the R&R and the other records in this case, the Court
18 finds good cause to accept and adopt Judge Cobb’s R&R in full. The Court addresses
19 below Plaintiff’s objection.

20 The dispositive issue with Plaintiff’s objection is—setting aside all the other issues
21 with Plaintiff’s case Judge Cobb identified—that the Court agrees with Judge Cobb that
22 his case is *Heck*-barred. Plaintiff writes in his objection, “Nowhere in the complaint does
23 Mr. Crabtree argue the validity of his sentence as his sentence is valid it is the violation of
24 Nevada Law by the District Attorney which is at issue.” (ECF No. 7 at 1.) But Plaintiff
25 specifically seeks “[h]is criminal conviction be vacated” in his notice of intent to file a civil
26 rights complaint. (ECF No. 1-1 at 4.) Thus, Plaintiff’s objection is unpersuasive on this
27 dispositive point. And as Judge Cobb points out in his R&R, Plaintiff already has a pending
28 habeas corpus petition. (ECF No. 6 at 5.) Plaintiff’s case is not cognizable.

V. CONCLUSION

The Court notes that Plaintiff made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the issues before the Court.

It is therefore ordered that the Report and Recommendation of Magistrate Judge William G. Cobb (ECF No. 6) is accepted and adopted in full.

It is further ordered that Plaintiff's objection (ECF No. 7) is overruled.

It is further ordered that this case is dismissed in its entirety, without prejudice but without leave to amend.

The Clerk of Court is directed to close this case.

DATED THIS 2nd day of April 2020.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE